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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,377	01/12/2004	Donald Jaffrey	A-71428 (461124-27)	2386

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EXAMINER

ONEILL, KARIE AMBER

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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04/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/089,377	Applicant(s) JAFFREY ET AL.	
	Examiner Karie O'Neill	Art Unit 1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Mark Ruthkosky/
Primary Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: The arguments presented by Applicant have been addressed in the Final Office Action dated November 26, 2007. However, the additional arguments will be addressed in this Advisory Action.

Applicant's principle arguments are:

(a) Sammes does not disclose an anode-side current collector that comprises a preformed tubular structure.

(b) It is clear the Office has mis-characterized Sammes because Sammes does not describe extruding an anode layer on a tubular metallic structure as is required by the claims.

(c) Whatever the exact arrangement of the anode-side collector, it is clear that they are not embedded in the anode material because Sammes explicitly says 'on' rather than using the words in, within or embedded.

(d) Further, if the 'wires' are not embedded in the anode, then they cannot provide structural reinforcement for the structure.

(e) Dodge teaches against the combination. Dodge describes two embodiments. Dodge teaches that when, as in the first embodiment, the tube is porous, "through-holes" are not necessary. However, in a second embodiment, when the tube is not porous, "through-holes" are used. Therefore, Dodge teaches against the instant invention because the instant invention provides a porous tube and therefore, according to Dodge, through-holes are not used.

In response to Applicant's arguments, please consider the following comments:

(a) The claim limitation recites, "wherein the anode-side current collector comprises a preformed tubular metallic structure". The anode-side current collector disclosed by Sammes on page 12 lines 9-19 is made of a number of wires twisted around each other. By twisting the wires around one another, electrical contact is ensured, but also space for gas to pass remains. The wires that are used as an anode-side current collector are preformed because they are manipulated and twisted. The wound wires form a tubular structure in order to allow for gas to flow through the center of the wound structure.

(b) Sammes discloses an alternate way of producing cells is by first extruding and sintering a tube of anode material onto which a thin layer of electrolyte is applied (page 12 lines 1-2). Claim 17 is a product by process claim because the claim is drawn to a product, but includes the process steps of extruding and curing.

(c) The Sammes reference teaches that the anode-side current collector comprises a metallic structure, made of nickel wire consisting of a number of wires twisted around each other to ensure that electrical contact takes place (page 12 lines 20-22). The wires are electrically connected to the anode layer, therefore, embedding at least part of the wire into the anode layer. If two flat surface layers were sintered one on top of the other, it could be surmised that the two layers would not be embedded into one another. However, two tubular or curved surfaces making contact with one another would cause some form of embedding to take place, unless each of the curved surfaces had the exact same surface curvature and laid directly upon one another. In Sammes, the current collector is formed from a number of twisted wires having one surface curvature. The wires are surrounded by a tubular anode layer having a second surface curvature. Therefore, the outer surface of the wires that make contact with the inner surface layer of the anode material must embed themselves into the anode material because they conduct electrons from the anode.

(d) The fact that the wires are connected to the inner side of the anode means that they must provide at least some form of structural reinforcement to the anode material just by being present and making contact with the anode material.

(e) It is possible that both embodiments of Dodge can be used in combination with Sammes. The first embodiment comprises a porous tube. The second embodiment comprises "through holes", which would still allow for the tube to be considered porous because the hydrogen containing gas is still able to pass through the surface.